



# UNITED STATES PATENT AND TRADEMARK OFFICE

*M*

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/674,680

09/29/2003

Michael Gabriel

12510/70

5087

26646

7590

05/02/2007

KENYON & KENYON LLP  
ONE BROADWAY  
NEW YORK, NY 10004

EXAMINER

MYINT, DENNIS Y

ART UNIT

PAPER NUMBER

2162

MAIL DATE

DELIVERY MODE

05/02/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/674,680	GABRIEL ET AL.	
	Examiner	Art Unit	
	Dennis Myint	2162	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### **Continued Examination Under 37 CFR 1.114**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 21, 2007 has been entered.
2. The amendment filed on February 21, 2007 has been received and entered. Claims 1-22 are pending in this application. Claims 1, 16, 18, and 19 are independent claims. On the amendment filed on February 21, 2007, claims 1, 3, 4, 8, 11, 12, 14, 15, 16, 17, 18, and 19 were amended.

### ***Response to Arguments***

3. Applicant's arguments filed on February 21, 2007 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required.

Claim 19 in line 1 recites "*An apparatus*". However, the specification of the instant application fails to provide proper antecedent for *an apparatus*, that is, the specification does not describe what an apparatus is.

### ***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claim 19 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 19 directed to an apparatus comprises software per se. In the interest of compact prosecution, examiner interprets "*an apparatus*" recited in claim 19 as being represented/embodyed by Figure 1 of the specification of the instant application, which is figure describing software per se. Software per se does not fall in the four categories of invention and therefore claim 19 is non-statutory. Software per se is not a series of steps or acts and thus is not a process. Software per se is not a physical article or object and as such is not a machine or manufacture. Software per se is not a

Art Unit: 2162

combination of substances and therefore is not a composition of matter.

Additionally, claim 19 in lines 6-7 recites "*instructions **capable of** being executed by the means for processing*". Said limitation is interpreted as being optional as to whether said instructions are done not. Instructions are only being capable of being executed but not actually executed yet. Therefore, Examiner is not giving much weight to the step/function, which follows the limitation "*capable of*". Therefore, Claim 19 fails to produce any tangible results because instructions are not actually executed yet and fails to fall in the four category of invention.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williamson et al. (hereinafter "Williamson") (U.S. Patent Application Publication Number 2003/0208767) in view of Willis et al., (hereinafter "Willis") (U.S. Patent Application Publication Number 2004/0003097).

As per claim 1, Williamson is directed to a method for searching for media content (Williamson, Paragraph 0135-0137) and teaches the limitations:

"receiving from a user a user profile which identifies preferred media sources" (Paragraph 0102, i.e., *Create New Profile* and Paragraph 0084, i.e., *...and recommended programs* (i.e., programs that the system reserves *automatically based on user profile* );

"receiving a search request from a user including at least one search criteria" (Paragraph 0102 and 0135-0157 , i.e. *A search may include one of these parameters or multiple parameters*);

"searching for media content based on the at least one search criteria and the user profile" (Paragraph 0102 and 0135-0157); and

"displaying scheduling information regarding the media content to the user"  
(Figure 12, 13, and 14).

Williamson does not explicitly teach the limitation: "a plurality of distribution source types".

On the other hand, Willis teaches the limitation:

"a plurality of distribution source types" (Willis, Paragraph 0003, i.e., *Such sites are generally known as "**portals**," and provide a central gateway through which users can be presented with options and links to various information sources. In this way, users can check, for example, their **stocks, mail, local weather, sports scores, and movie listings***; Paragraph 0015, i.e., *In another implementation, a system combines the concepts of the portal and personalized content with other delivery channels, such as, for example, telephone, radio, and television*; Paragraph 0088, i.e., *Articles may be, for example, text, video, audio, HTML, or another available rendering medium, or a combination of two or more of these media. Articles may contain the same piece of content in multiple forms, and may permit generation of one type of content from another, as discussed below*; and Paragraph 0094, i.e., *One type of router that is capable of performing the functionality of content-based router 130 is known as Elvin and is produced by the Distributed Systems Technology Centre (DSTC). Other types of content-based services include Gryphon, produced by International Business Machines (IBM), and Keryx, a Java-notification service by Hewlett Packard*).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to combine the feature of searching a plurality of media

Art Unit: 2162

distribution source types, as taught by Willis, with the method of Williamson so that the combined method would comprise searching a plurality of media distribution source types for media content. One would have been motivated to do so in order to allow users to designate categories of information in which desired content may be presented (Willis, Paragraph 0003).

As per claim 2, Williamson teaches the limitation:

"wherein the media content includes at least one of a video, audio, a still image, printed material, text, a movie, and a television program" ( Paragraphs 0039 and 0066).

As per claim 3, Williamson teaches the limitation:

"wherein the information regarding the media content includes availability information that indicates availability of media content, which meets the at least one search criteria, from at least one of the preferred media sources" (Paragraph 0084, i.e. .... *upcoming programs* (i.e. programs that are scheduled to be reserved but has yet to be broadcast) *and recommended programs*... and Willis Paragraphs 0003, 0088, and 0094).

As per claim 4, Williamson teaches the limitation:

"wherein the availability information includes at least two of movie theater show time data, television broadcast data, and retail data (Paragraph 0084, i.e. .... *upcoming programs* (i.e. programs that are scheduled to be reserved but has yet to be broadcast)



Art Unit: 2162

*and recommended programs...; Paragraph 0086, i.e. .... upcoming (i.e. to be broadcast in the future) or by the reservation date of the program; and Paragraph 0088, i.e., broadcast time for current and future reserved programs, rating (such as G, PG-13 and R....and Willis Paragraph 0003, i.e., In this way, users can check, for example, their stocks, mail, local weather, sports scores, and **movie listings**).*

As per claim 5, Williamson teaches the limitation:

*"wherein the search for media content is performed on at least one database"*  
(Figure 1: Library Manager 113, ; Paragraph 0048, i.e. ...*forwards the same to library manager 113 for long-term storage; and Paragraph 0039, i.e., database services*).

As per claim 6, Williamson teaches the limitation:

*"wherein the user profile includes at least one of a zip code and a television provider data"* (Paragraph 0150, i.e. ... *having specified zip codes*).

As per claim 7, Williamson teaches the limitation:

*"providing online purchase capabilities such that the user is able to purchase at least one of the media content, tickets to view or hear the media content, and merchandise related to the media content"* (Paragraph 0127-0128, i.e. ....*including Add Video to Shopping Cart 3321, Buy CD 3322, Buy Video 3323, Concert Information 3324, MP3 Download 3325 and Photos 3326*).

As per claim 8, Williamson in view of Willis teaches the limitation:

"wherein the plurality of media distribution source types includes at least two of: i) at least one movie theater source type, ii) a local cable TV or satellite TV provider source type, iii) preferred online retailer source type" (Paragraph 0039, i.e., *Headend 105 receives programs and services from various providers and sources, e.g., analog and digital satellite sources, application servers, media servers, the Internet etc.*; and Willis Paragraph 0003, i.e., *In this way, users can check, for example, their stocks, mail, local weather, sports scores, and **movie listings***).

As per claim 9, Williamson teaches the limitation:

"wherein the search criteria includes at least one of title data, cast member data, and director data" (Paragraph 0102, i.e., *These parameters may include programming category, actor(s) names, program title, director, keyword and the like*).

As per claim 10, Williamson teaches the limitation:

"wherein the information regarding the media content is displayed on at least one of: i) a display associated with a set-top box, ii) a display of a computer arrangement, a TV, a wireless device, and a cell phone" (Figures 12-16, Paragraph 0070, and Paragraph 0095).

As per claim 11, Williamson in view of Willis teaches the limitation:

"notifying the user in the future when the media content becomes available from at least one of the preferred media distribution sources, if the media content is not currently available from the at least one of the preferred media distribution sources"

(Williamson, Paragraph 0150-0153, "Messaging Service" and Willis Paragraphs 0003, 0088, and 0094).

As per claim 12, Williamson in view of Willis teaches the limitation:

"notifying the user in the future when the media content becomes available from at least one non-preferred media distribution source" (Paragraph 0150-0153, i.e., *Messaging Service* and Paragraph 0139-0148, i.e., *Commercial Targeting and Playback Monitoring*; and Willis Paragraphs 0003, 0088, and 0094).

As per claim 13, Williamson teaches the limitation:

"wherein the user is notified via at least one of email, instant message, and postal mail" (Paragraph 0150-0153, i.e., *Messaging Service*).

As per claim 14, Williamson in view of Willis teaches the limitation:

"periodically searching for the availability information related to at least one of the preferred media distribution sources if the media content is not currently available from the at least one of the preferred media distribution sources" (Paragraph 0084, i.e., *...recommended programs* (i.e., programs that the system reserves automatically based on user profile...; and Willis Paragraphs 0003, 0088, and 0094).

As per claim 15, Williamson I view of Willis teaches the limitation:

"requesting a user notification of when the media content becomes available from at least one preferred media distribution source, if the media content is not currently

available from the at least one preferred media distribution source” (Williamson et al., Paragraph 0151, i.e., *The subscriber content level*; and Willis Paragraphs 0003, 0088, and 0094).

As per claim 16, Williamson in view of Willis teaches the limitations:

“determining an availability of the media content from a plurality of media distribution sources that are selected in accordance with at least one user selection interpreted based on a user-profile, the plurality of media distribution sources including different types of media distribution sources” (Williamson, Paragraph 0099, i.e., *s multiple users in a household may establish **one or more** personal profiles that enables users to sort content and channels by **the user’s personal content preferences***; and Willis Paragraphs 0003, 0088, and 0094 ) and

“selectively displaying on a single page scheduling information regarding availability of the media content from a plurality of media distribution sources which are selected by a user” (Williamson Figures 12-16; and Willis Paragraphs 0003, 0088, and 0094).

As per claim 17, Williamson teaches the limitation:

“allowing a user to request, from the single page, notification in the future when the media content becomes available from at least one of the media distribution sources, if the media content is not currently available from the at least one of the media distribution sources” (Williamson, Figures 12-16 and Paragraph 0151, i.e. ....*those*

*users who request baseball programs frequently may be grouped as baseball fan-users. Thus the messaging service in question may from time to time provide targeted messages concerning baseball games, equipment, etc. to such baseball fan-users. In addition, the messaging service may provide personal messages to a user, including messages concerning the user's account, an expiration of the user's reserved program, etc.; and Willis Paragraphs 0003, 0088, and 0094).*

Claim 18 and 19 are rejected on the same basis as claim 1.

As per claim 20, Williamson teaches the limitations:

*"interpreting at least a portion of the at least one search criteria in accordance with user profile" (Paragraph 0101, i.e., If the user wants to find a program that meets the parameters of the user's existing Favorite profile, the "Find Favorite Shows" feature is selected from the Favorites submenu 1420 ; and Figure 15: Continue to narrow search until one or two criteria have been established, e.g., Actor's name + category) and*

*"where the searching is based, at least in part on interpreting" (Paragraph 0101 and Figure 15; Note that any search involves interpreting search criteria).*

Claims 21 and 22 are rejected on the same basis as claim 20.

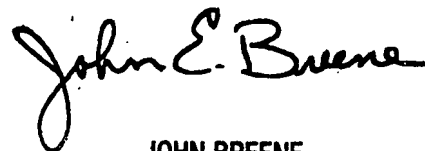
### Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Myint whose telephone number is (571) 272-5629. The examiner can normally be reached on 8:30AM-5:30PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-5629.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dennis Myint  
Examiner  
AU-2162



JOHN BREENE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100